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OFFICE OF PETITIONS

Applicant: Kunsch et al.
Appl. No.: 09/987,755
Filing Date: November 15, 2001
Title: HUMAN HEPATOMA-DERIVED GROWTH FACTOR-2
Attorney Docket No.: PF198D1C1
Pub. No.: US 2003/0022312 A1
Pub. Date: January 30, 2003

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on March 27, 2003.

The request is **DISMISSED**.

The instant request is that the application be republished because the patent application publication contains an error in claim 1, wherein "An isolated polynucleotide comprising a member selected from the group consisting of" is misprinted as "An isolated polynucleotide comprising a member selected from the group consisting or", which is a material mistake. Applicant also states that this error could affect the scope of the provisional rights or undermine the strength of the publication as prior art.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹ The instant request does not identify a material mistake in the publication made by the Office:

The instant request identifies a minor typographical error in claim 1, wherein "An isolated polynucleotide comprising a member selected from the group consisting of" is misprinted as "An isolated polynucleotide comprising a member selected from the group consisting or," which is not a material mistake because the technical disclosure and the claims are understandable, as the phrase is clearly understandable. The phrase "selected from the group consisting of" is a very well known phrase in claim terminology, which has a clear meaning. The typographical error identified by applicant is an Office mistake, but it is not a material mistake as required by 37 CFR 1.221(b).

The misspelling is a minor typographical error, which is clearly understandable from reading the specification and claims in which the term is used, as words are not read in a vacuum. The error does not affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

The applicant is advised that a "request for republication of an application previously published"

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

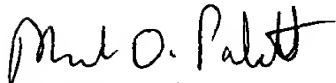
Any request for republication under 37 CFR 1.221(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
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By facsimile: 703-305-8568

The application is being forwarded to Technology Center 1632 to await further examination in due course.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).



Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy